

UNITED STATES
v.
THELMA O. CRISMON

IBLA 78-307

Decided May 2, 1978

Appeal from decision of Administrative Law Judge Dean F. Ratzman declaring the Lucky Ed placer mining claim null and void. Contest No. CA-4250.

Affirmed.

1. Administrative Procedure: Hearings – Hearings – Mining Claims: Hearings

When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. Where a mining claimant has shown no justification for her failure to offer evidence of a discovery at the hearing nor shown any likelihood that further evidence could be presented to change the result, a request on appeal for additional time to explore the claim for additional evidence of minerals will be denied, and an Administrative Law Judge's decision declaring the claim null and void will be affirmed.

APPEARANCES: Thelma O. Crismon, pro se; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for the United States, at the hearing.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Thelma O. Crismon appeals from the February 23, 1978, decision of Administrative Law Judge Dean F. Ratzman declaring her Lucky Ed placer mining claim null and void because no discovery of a valuable mineral deposit had been made within the limits of the claim (Contest

No. CA-4250). Appellant requests additional time to prove her mining claim valid. The United States filed no arguments with the Board.

In his decision, Judge Ratzman described the testimony and evidence presented at the hearing, summarized the applicable law and ruled that the United States had presented a prima facie case of no discovery. The Judge then held that appellant had not overcome the prima facie case by a preponderance of the evidence and declared the mining claim null and void. Appellant has not alleged any error in the Judge's decision. For the reasons stated below we cannot grant her any additional time.

[1] When the United States contests a mining claim for lack of discovery of a valuable mineral deposit, a crucial date for the existence or nonexistence of the discovery is the date of the hearing. ^{1/} E.g., United States v. Denison, 71 I.D. 144 (1964); aff'd sub nom. Smith v. Morton, 489 F.2d 1275 (9th Cir.), cert. denied, 419 U.S. 835 (1974). On appeal, the case must be decided based upon the record established at the hearing. If additional evidence is tendered on appeal, it will only be considered for the limited purpose of determining whether a further hearing should be held. United States v. Denham, 29 IBLA 185 (1977); United States v. Taylor, 25 IBLA 21, 25 (1976).

Appellant has made no offer of proof in support of her request for further time to explore her mining claim. She located her claim in 1960. The contest complaint was received by appellant on May 31, 1977. The hearing was held on December 6, 1977. Appellant has had ample time to explore her claim and to show whether a valuable mineral deposit exists on it. See United States v. Zweifel, 508 F.2d 1150, 1156 (10th Cir. 1975). Appellant has shown no justification for a failure to offer evidence at the hearing nor has she shown any likelihood that any evidence could be presented which might warrant a change in the result of this case. Without such showings, appellant's request for additional time to explore her claim is denied and the decision appealed from is affirmed. United States v. Hanson, 26 IBLA 300 (1976); United States v. Laing, 3 IBLA 108, 112-13 (1971); United States v. Dreval, 1 IBLA 103, 112-14 (1970); United States v. Stevens, 77 I.D. 97, 105 (1970), aff'd, Stevens v. Hickel, Civil No. 1-70-94 (D. Idaho, June 4, 1971).

^{1/} In addition, if the mining claim is located on land subsequently withdrawn from the operation of the mining laws, a discovery must be shown as of the date of withdrawal. United States v. Garner, 30 IBLA 42, 66 (1977). In some situations, an additional date of proof may be set by statute. E.g., 30 U.S.C. § 611 (1970). However, a discovery must always be shown as of the date of the hearing, as well as any other relevant crucial date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Dean F. Ratzman declaring the Lucky Ed placer mining claim null and void is affirmed.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge.

